

# VicSmart Guide

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Department  
of Transport  
and Planning



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## Introduction

VicSmart is a streamlined planning permit assessment process for eligible applications. This guide assists councils, planners and practitioners to understand and implement VicSmart and outlines:

- VicSmart’s legislative and planning framework
- the classes of VicSmart application
- how the VicSmart assessment process operates.

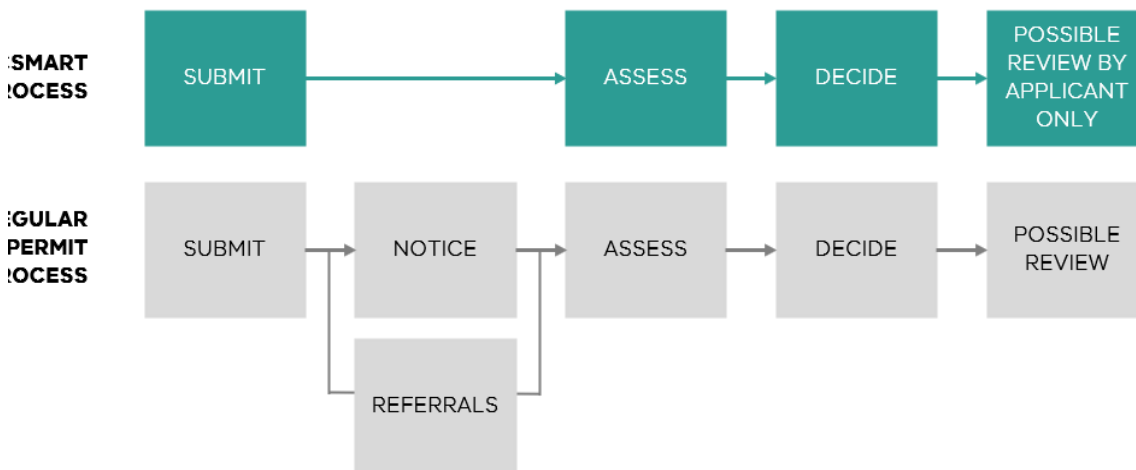
## VicSmart – a faster assessment process

The VicSmart process:

- provides a standard statewide process for assessing applications in 10 business days
- ensures timely and efficient processing of eligible applications
- ensures the level of assessment is proportional to the nature of the proposal
- reduces the regulatory and administrative burden for simple applications
- provides certainty to applicants and councils about the information required and the matters to be considered when making a decision.

With the introduction of VicSmart into the Victorian planning system, two permit processes apply in Victoria – VicSmart and the regular permit process.

Figure 1: The two permit processes



## Key features of VicSmart

Key features of the VicSmart permit process are:

- A 10 business day assessment period.
- An applicant is expected to submit all necessary information with the application including any referral authority approval before lodging the application with council.
- Notice of the application is not given to neighbours.
- The application is only assessed against specific pre-set decision guidelines.

- Council can request further information if necessary.
- The Chief Executive Officer (CEO) of the council or a delegate will decide the application.
- An applicant has a right of review to the Victorian Civil and Administrative Tribunal (VCAT).

## Differences between the two permit processes

While the VicSmart and regular permit processes are 'merit' assessments, the processes differ in some important ways.

VicSmart has fewer steps than the regular permit process and it involves a more tightly focused planning assessment. The differences between the two processes are summarised below.

### Key differences

| Steps                                                   | Regular permit process                                                                                                                              | VicSmart process                                                                                                                                      |
|---------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------|
| Requesting further information under s.54 of the Act    | If the request is made within 28 days of receiving the application, the statutory clock stops and returns to zero when the information is received. | If the request is made within five days of receiving the application, the statutory clock stops and returns to zero when the information is received. |
| Giving notice of the application under s.52 of the Act  | Yes.<br>If the responsible authority considers giving notice is necessary.                                                                          | No.<br>The giving of notice is not required.                                                                                                          |
| Referring the application under s.55 of the Act         | Yes.<br>If required, the applicant can submit written consent with the application or council can refer the application after it has been received. | No.<br>If required, written consent from a referral authority must be submitted with the application.                                                 |
| Matters to be considered when assessing the application | Full assessment against the requirements of s.60 of the Act, PPF, MPS and local provisions.                                                         | Only assessed against the VicSmart decision guidelines.                                                                                               |
| Deciding the application                                | Council (or delegate).                                                                                                                              | Chief Executive Officer (or delegate).                                                                                                                |
| Third party review rights                               | Yes.<br>Unless specifically exempt in the planning scheme.                                                                                          | No. Only an applicant has a right of review.                                                                                                          |
| Applicant review against failure to decide              | 60 calendar days after lodgement.<br><br>Applicant may apply for a review if no decision is made within time.                                       | 10 business days after lodgement.<br><br>Applicant may apply for a review if no decision is made within time.                                         |



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## Legislative framework for VicSmart

### *The Planning and Environment Act 1987*

The *Planning and Environment Amendment (VicSmart Planning Assessment) Act 2012* came into effect on 20 May 2013 to allow a streamlined permit process to be set up in planning schemes for straightforward, low-impact development proposals.

The *Planning and Environment Act 1987* (the Act) enables planning schemes to set out a different procedure for classes of application where:

- the notice requirements of section 52(1) of the Act do not apply
- third party review rights in section 82(1) of the Act do not apply
- some decision making considerations in sections 60(1) and 84B(2) of the Act do not apply
- the CEO of the municipal council or delegate is the responsible authority for the application.

### *The Planning and Environment Regulations 2015*

The Planning and Environment Regulations 2015:

- prescribe a time of 10 business days after which an applicant may apply to VCAT under section 79 of the Act for a review of the responsible authority's failure to grant a permit for a VicSmart application
- prescribe a time of five business days within which the responsible authority may require further information and stop the statutory clock (the clock 'restarts' at zero from the time the requested information is given to the responsible authority)
- require the responsible authority to specify in the planning register whether an application is a VicSmart application.

The prescribed times for an applicant to apply for a review of a refusal, conditions in a permit and extension of time requests are the same as those for a regular permit application.

## The VicSmart planning provisions

The VicSmart planning provisions form part of the *Victoria Planning Provisions* and are included in every planning scheme.

Zones, overlays, particular provisions and clause 59 set out the VicSmart assessment process, the classes of application that must be determined by the VicSmart process, and the information requirements and decision guidelines for each class of application.

- **Clause 71.06** sets out the planning assessment process for VicSmart applications.
- **Zones, overlays, particular provisions and the schedule to clause 59** set out:
  - the classes of VicSmart application
  - the relevant provision that contains the information requirements and decision guidelines that apply to each class of VicSmart application.
- **Clauses 54, 55, 59.01 to 59.14 and the schedule to clause 59.16** set out the information requirements and decision guidelines for each class of VicSmart application.



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## The VicSmart planning provisions

### Clause 71.06 – Operation of the VicSmart assessment process

Clause 71.06 sets out:

- the criteria for when an application is a VicSmart application
- the operational provisions for the VicSmart assessment process.

In particular, the clause:

- exempts a VicSmart application from:
  - the notice requirements of section 52(1) of the Act
  - the matters a responsible authority must consider in sections 60(1)(b), (c), (e) and (f) and (1A) (b) to (h) and (j) of the Act
  - the requirements for the granting of a permit if there are objectors under sections 64(1), (2) and (3) of the Act
  - third party rights for a review under section 82(1) of the Act
  - the matters VCAT must take into account in sections 84B(2)(b) to (ja) of the Act
- requires a VicSmart application to be submitted with the relevant information specified in the planning scheme
- sets out the matters to be considered by the responsible authority in deciding a VicSmart application.

## Classes of VicSmart application

### Zones, overlays and particular provisions

Zones, overlays and particular provisions list classes of VicSmart application. These classes are set by the Minister for Planning in the *Victoria Planning Provisions* and cannot be varied by a council.

Zones, overlays and particular provisions also direct the council and applicant to the appropriate provision that sets out the information requirements and decision guidelines for each VicSmart class of application.

### Clause 59.15 – Local VicSmart applications

A council may also specify local classes of VicSmart application for any class of application in a zone, overlay or particular provision in the planning scheme. Local VicSmart applications will be listed in the schedule to Clause 59.15.

## Classes of VicSmart application

### Clause 59 – for VicSmart applications listed in a zone, overlay or particular provision

Clauses 54, 55 and 59.01 to 59.14 set out the information requirements and decision guidelines for VicSmart applications listed in zones, overlays and particular provisions. The same requirements apply in every planning scheme.

These clauses cannot be locally varied.



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The information requirements and decision guidelines have been individually tailored to the nature of the proposed development and the reason why a permit is required.

A council officer cannot ask an applicant to provide more information than is listed in the relevant provision. However, a council officer may waive or reduce the required information if satisfied the application can be assessed without the information.

### Clause 59.16 – for local VicSmart applications

Clause 59.16 enables a council to set out information requirements and decision guidelines for a local VicSmart application.

Council can specify new information requirements and decision guidelines for each local VicSmart class of application in the schedule to clause 59.15, or it can use the information requirements and decision guidelines specified in clauses 59.01 to 59.14. A council officer cannot ask an applicant to provide more information than is listed in the relevant provision or in the schedule to clause 59.16. However, a council officer may waive or reduce the required information if satisfied the application can be assessed without the information.

### Responsible authority for VicSmart applications

The schedule to clause 72.01 in planning schemes specifies the responsible authority for VicSmart applications. In most circumstances the Chief Executive Officer of the relevant municipal council is the responsible authority for considering and determining VicSmart applications in accordance with Part 4 of the Act.

## Identifying a VicSmart application

Identifying a VicSmart application is no different from identifying other kinds of applications in the planning scheme. It requires some understanding of how the planning scheme works and the various permit triggers that apply to a proposal.

Many applicants may be unfamiliar with planning processes and the planning scheme. Councils will need to introduce business practices if they have not already done so to assist them to identify VicSmart applications both at pre-application advice and at lodgement to ensure the requirements of VicSmart are met.

A variety of guides, information sheets and checklists are available to support applicants and councils.

### When is an application a VicSmart application?

An application is a VicSmart application if:

- the application is in a class or classes of VicSmart application specified in a zone, overlay, particular provision or the schedule to clause 59.15
- a permit is required only under the provisions of the planning scheme that are specified as a VicSmart application, and not under any other provision of the planning scheme
- any permit issued will not result in a breach of a registered restrictive covenant
- where referral is required under clause 66, the application:
  - has been considered by the referral authority within three months prior to the application being made to the responsible authority; and

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- the referral authority has stated in writing that it does not object to the granting of the permit for the proposal.

If a referral authority objects to the granting of the permit, the application is not a VicSmart application and will be subject to the regular permit process.

The classes of VicSmart applications and requirements are listed in the zones, overlays and particular provisions in planning schemes.

### Local VicSmart classes of application

Clause 59.15 allows a council to specify local classes of VicSmart applications.

Local VicSmart applications can be specified for any class of application in a zone, overlay or particular provision in the planning scheme.

Council can consider listing both existing permit triggers and any proposed new permit triggers as local VicSmart applications.

Clause 59.16 enables a council to set out the information requirements and decision guidelines for a local VicSmart application. In some cases, council can use the existing clause 59 information requirements and decision guidelines for similar types of local VicSmart applications rather than preparing a new schedule to clause 59.16.

A local VicSmart application cannot be used to add to the existing information requirements or decision guidelines for a VicSmart class of application listed in a zone, overlay or particular provision.

An amendment to the planning scheme is required to introduce a local VicSmart application.

## Understanding the VicSmart permit triggers

### Do the VicSmart planning provisions trigger a permit?

The VicSmart planning provisions do not trigger the permit requirement for a VicSmart application. The permit requirement continues to be triggered in the zone, overlay or particular provision. VicSmart identifies which classes of application are eligible for the VicSmart process when a permit requirement is triggered.

### What happens if a proposal falls into more than one class of VicSmart application?

A proposal can have more than one permit trigger that is classed as VicSmart and therefore fall into more than one class of VicSmart application.

Where a proposal falls into more than one VicSmart class of application, the information requirements and decision guidelines of each class apply.

For example, an application for a 1.8 metre front fence in a residential zone and a Heritage Overlay must meet the information requirements of both classes of VicSmart application – to construct a front fence in a residential zone and a fence in a Heritage Overlay.

The application must also be assessed against the decision guidelines for each VicSmart class of application.



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## Can an application with multiple permit triggers be split?

The nature of the proposal being assessed and the permit triggers will determine if an application can be split. An application cannot be split when approval of one part of a proposal necessitates consideration and approval of another part. Conversely an application could be split when the individual parts can be independently considered and approved.

For example, where a planning permit is required to extend a shop and reduce car parking, approval of the proposed extension is dependent on approval of the car parking reduction. Similarly, the car parking reduction will involve considering the additional floor area proposed. Each component of the application cannot be assessed without considering the other. The application cannot be split.

However, an application could be split when the individual parts can be independently considered and are not interconnected. For example, in a Heritage Overlay where a planning permit is required for a fence and house extension, approval of the fence is not dependent on approval of the house extension. One may be assessed without considering the other. The application could be split.

## The VicSmart permit process

The VicSmart permit process involves four simple steps to a decision:

### Prepare

Preferably, the applicant discusses the proposal with council to determine if VicSmart applies and what information is required to be submitted.

### Submit

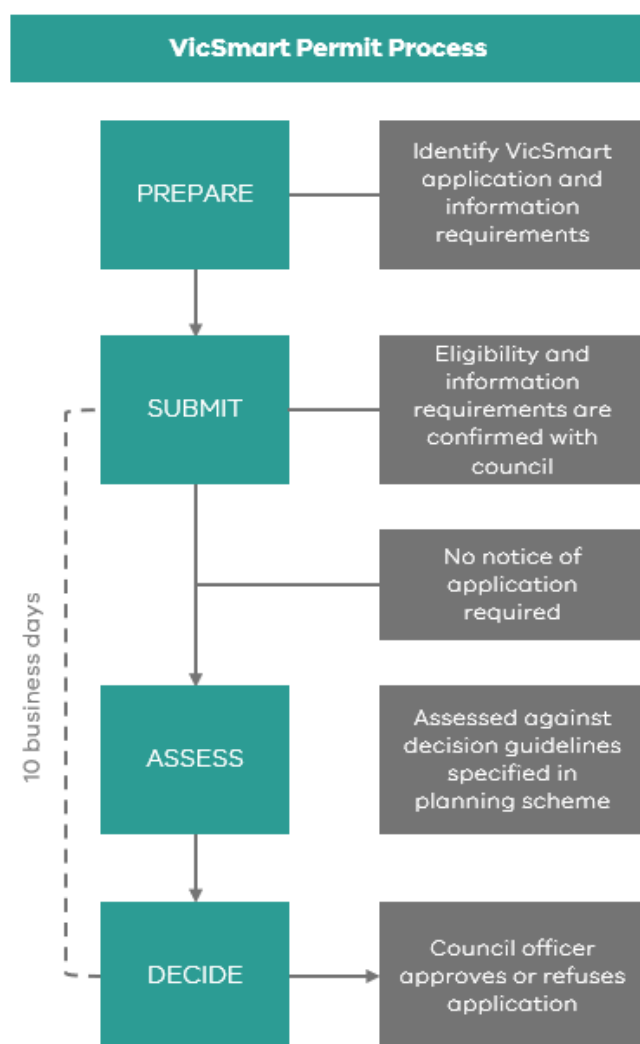
The application is submitted with the information specified in the relevant clause of the planning scheme.

### Assess

A council officer assesses the application against the decision guidelines specified in the relevant clause of the planning scheme.

### Decide

The Chief Executive Officer or a delegate decides to approve or refuse the application.



## Pre-application

The applicant may need assistance to lodge a VicSmart application. Pre-application advice, guides, and checklists are ways to help the applicant submit a complete application.

Many councils provide advice on how they make their decision on planning applications both as pre-application advice and in their guides. This practice should continue with VicSmart applications provided the advice does not add to the information requirements or decision guidelines specified in the VicSmart provisions.

### Pre-application discussions

Before lodging an application, an applicant should discuss the proposal with council to:

- determine whether the application is a VicSmart application
- identify the information requirements and decision guidelines that apply to the application
- consider whether any specialist advice is required prior to lodgement

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- obtain any checklist or other information that will help to prepare the application.

Pre-application discussions help to ensure that an application is lodged with the right information to assist council officers to process the application within statutory timeframes and avoid the need for further information requests.

## VicSmart checklists

Checklists are available to assist applicants to prepare applications. The VicSmart checklists summarise general application requirements and the requirements related to each class of application.

Completing the relevant checklist will assist in ensuring that all the required information is submitted with an application.

Where a proposal falls into more than one VicSmart class of application, the information requirements of each class of application apply and the corresponding checklist should be completed. An application may need more than one checklist.

Each checklist includes notes referring to other checklists that may need to be completed.

## Submitting an application

A completed application form, fee and the information listed in the relevant provision of the planning scheme and any other information required under section 47 of the Act must be submitted with an application.

### What information must be submitted with an application?

Applicants must submit the right information at the start of the process. The information to be submitted with a VicSmart application is specified in the relevant provision of the planning scheme.

A council officer may waive or reduce the required information if they are satisfied that they can assess the application without it. A council officer cannot ask for more information than is listed in the VicSmart provisions.

The information relates to the nature of the development and the reason why a permit is required. The information required will vary depending on the proposal.

### Is there a different fee for VicSmart applications?

VicSmart applications are subject to a different application fee to regular planning permit applications. The VicSmart fee is proportional to the shorter application process and reflects the lower processing costs. The Planning and Environment (Fees) Regulations 2016 set out the VicSmart fees which vary, based on the cost of development.

## Registering an application

### The planning register

Only one planning application register will continue to operate. VicSmart applications are required to be recorded in the same register already kept by the responsible authority for applications as specified under section 49 of the Act.



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The Planning and Environment Regulations 2015 require the responsible authority to detail in the register whether an application is a VicSmart application.

The register includes applications for which the council is the responsible authority as well as those for which an officer of the council is the responsible authority.

## Reporting VicSmart applications

Information on VicSmart applications will be collected and reported in the Planning Permit Activity Reporting System.

## Information requirements

The information requirements and decision guidelines have been individually tailored to the nature of the proposed development and the reason why a permit is required.

Council officers decide the appropriate information requirements from those listed in the relevant provision of the planning scheme.

A council officer may waive or reduce the required information if satisfied the application can be assessed without it. However, a council officer cannot ask for more information than is listed in the relevant provision.

Checklists enable a council officer to quickly assess whether all the information has been received.

### What does a council officer do if the submitted information is inadequate?

If inadequate information is submitted with the application a council officer should contact the applicant directly and advise that without the information the application cannot be decided in 10 business days.

VicSmart applications can be subject to formal requests for further information under section 54(1) of the Act. The processes are the same as for a regular application, however, the prescribed time for the issue of a notice requesting further information is five business days of receiving the application.

The request for further information must be in writing, setting out the information to be provided.

### How does a formal request for further information affect the time an applicant can lodge a review against failure to decide?

If the formal request for further information is made within five business days of receiving the application:

- the statutory clock stops and rewinds to zero once the information is received
- the time for a review against failure to decide is calculated from when further information is received.

If the request for further information is not made within five business days, the statutory clock does not stop and the time for review against failure to decide is calculated from when the application was received.



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## Can a VicSmart application lapse?

If the request for further information is made within five business days of receiving the application, the request must also specify a date by which the information must be received.

An application lapses if the requested information is not provided by the date specified by the responsible authority. The lapse date must not be less than 30 days after the date of the notice requesting the information.

An application that has lapsed cannot be recommenced. It is important that applicants are made aware of the consequences of allowing an application to lapse.

If the request for further information is not made within five business days of receiving the application, the application cannot be lapsed.

## Can an applicant seek an extension of the time to provide information?

An applicant can apply to extend the date to provide information provided the request to extend the date is made before the lapsing date.

## How are disputes about information requests resolved?

Both the request for information and a refusal to extend the time to provide information can be reviewed. The review processes for information requests are the same as the regular application process.

## Must a certificate of title be provided?

A certificate of title has been included as an information requirement for each class of VicSmart application, to be provided 'as appropriate'. A council officer determines whether a certificate of title is required given the nature of the proposal, the decision guidelines to be considered and the information required to allow the officer to make a decision.

In some circumstances it may be possible to decide the application without a certificate of title being provided.

## What if there is a registered restrictive covenant on the land?

VicSmart does not change any of the existing requirements regarding a registered restrictive covenant.

If the land is burdened by a registered restrictive covenant, an application must be accompanied by a copy of the covenant.

An application where anything authorised by the grant of a permit results in a breach of a registered restrictive covenant is excluded from being a VicSmart application.

## What if there is a section 173 agreement or encumbrance other than a registered restrictive covenant on the land?

A landowner is obliged to meet the requirements of any section 173 agreement or encumbrance.



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Where relevant, a section 173 agreement or an encumbrance can be considered in deciding a VicSmart application.

## Referrals

### How are referrals dealt with?

Some applications will require referral authority approval. There are two types of referral authority:

- a determining referral authority; and
- a recommending referral authority.

Clause 66 of the planning scheme identifies the type of referral authority for each kind of application that must be referred. [\*Planning Practice Note 54: Referral and Notice Provisions\*](#) (Department of Planning and Transport (DTP) 2023) explains this in more detail.

Where a VicSmart application has a referral requirement under clause 66, the applicant must obtain the written consent (with or without conditions) of the referral authority before lodging the application with the council. They must submit the written consent and a copy of the approved plans with the application. The written consent of the referral authority must be obtained within three months prior to lodging the application.

If the applicant does not obtain this consent or the referral authority objects, the application is not a VicSmart application and must be processed through the regular permit process.

This requirement only applies to referrals under clause 66 and not internal referrals for specialist advice.

Applications under the Special Building Overlay (SBO) and Salinity Management Overlay (SMO) require referral under clause 66.

The SBO is most common in Metropolitan Melbourne where Melbourne Water is specified as a determining referral authority. Melbourne Water has introduced a streamlined process to assess referrals for VicSmart applications which is outlined in [\*How to Apply for a VicSmart Planning Permit Under the Special Building Overlay\*](#) (Department of Environment, Land, Water and Planning 2017).

### Notice to referral authority of permits, notices of decision and refusals

Under section 66 of the Act, the responsible authority must give a relevant referral authority notice of its decision under VicSmart as set out below.

| Is notice to referral authorities given? |                                                                                                                              |                                                                                                    |
|------------------------------------------|------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------|
|                                          | Determining referral authority                                                                                               | Recommending referral authority                                                                    |
| Copy of permit                           | Yes                                                                                                                          | Yes                                                                                                |
| Notice of decision                       | No – Would not apply as VicSmart removes third party notice and review rights therefore no notice of decision can be issued. | Yes – If the responsible authority decided not to include a condition on the permit recommended by |

| Is notice to referral authorities given? |     |                                                                                                      |
|------------------------------------------|-----|------------------------------------------------------------------------------------------------------|
|                                          |     | the recommending referral authority.                                                                 |
| Notice of refusal                        | Yes | Yes – If the recommending referral authority recommended that a condition be included on the permit. |

## Internal referrals

Internal referrals for specialist advice remain an important part of assessing VicSmart applications, however, they must be done expeditiously to achieve the statutory timeframe. Some applications may benefit from specialist advice prior to lodgement and this can be identified at the pre-application stage.

## Assessing an application

### What matters can be considered?

A council officer must assess a VicSmart application in accordance with the relevant provisions of the planning scheme for that VicSmart class of application. If there is any inconsistency between the requirements of the relevant provision for that VicSmart class of application and another provision of the planning scheme, the VicSmart provision prevails.

In deciding a VicSmart application, a council officer must only consider the decision guidelines specified in the relevant provision of the planning scheme for that VicSmart class of application. In some cases, the decision guidelines enable a council officer to consider a relevant local planning policy or the decision guidelines of a zone, overlay or particular provision. Under section 60(1A)(i) of the Act, a council officer is also able to consider any section 173 agreement affecting the land.

It is important to note that a council officer cannot consider any of the following matters:

- the decision guidelines of the relevant zone, overlay or particular provision if they are not specified in the relevant decision guidelines for that VicSmart class of application
- the decision guidelines in clause 65
- any objections or submissions which it has received.

### Can a VicSmart application be assessed under the regular permit process?

If a proposal meets the criteria to be a VicSmart application, it must be assessed using the VicSmart process.

A council cannot choose to assess a VicSmart application using the regular permit process.

### Can local planning policies be considered?

Local planning policies can only be considered where they are specified in the decision guidelines for a VicSmart class of application.

The decision guidelines for a VicSmart heritage or advertising sign application enables a council officer to consider any relevant local planning policy. Similarly, the decision guidelines for a



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VicSmart tree removal or a fence application under an overlay refer to statements of significance included in the relevant overlay.

## Deciding an application

### Who decides a VicSmart application?

In most circumstances the CEO of the municipal council is the responsible authority for VicSmart applications. Under section 188 of the Act, the CEO may delegate responsibility to decide a VicSmart application to other officers of the council. A model instrument of delegation is available at [planning.vic.gov.au](http://planning.vic.gov.au).

### What timeframes apply to deciding a VicSmart application?

A decision should be made within 10 business days of receipt of an application. After 10 business days, an applicant will have a right of review for failure to decide. There is no need to automatically approve or refuse an application after 10 business days.

### How is the 10 business days calculated?

The receipt of a completed application form is the trigger for calculating the elapsed days.

In calculating the elapsed days:

- The day of receipt is not included in calculating the period (section 44(1) of the *Interpretation of Legislation Act 1984*). That is, the 10 business days does not include the day of receipt.
- The time of receipt of an electronic communication at an electronic address designated by the addressee, is when the electronic communication becomes capable of being retrieved by the addressee at that address (section 13A of the *Electronic Transactions (Victoria) Act 2000*).
- Only business days are included. Saturdays, Sundays and public holidays (including half days) are excluded.
- The end day is included in calculating the period (section 44(2) of the *Interpretation of Legislation Act 1984*).

### Can a VicSmart application be decided after an application for review has been lodged?

Section 84 of the Act enables the responsible authority to decide an application after an application for review of the failure to grant the permit is made. However, the permit or refusal must not be issued.

Where a permit would have been granted, deciding an application before the VCAT hearing can expedite decision making and minimise attendance at VCAT.

If the responsible authority decides to grant a permit, they must advise the Registrar of VCAT immediately. VCAT will then decide the appropriate course of action.

## Review rights

An applicant's rights for a review at VCAT are the same as for a regular application. An applicant can apply for a review of:

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- 
- a requirement for more information
  - a refusal to extend the time to provide information
  - failure to grant a permit within the prescribed time
  - a refusal to grant a permit
  - conditions in a permit
  - a refusal to extend the time to commence or complete a development or use.

A VicSmart applicant can also use sections 149(A) and 149(B) of the Act to seek a declaration from VCAT regarding the interpretation of the planning scheme and anything done by a responsible authority under the Act.

The VicSmart process exempts VicSmart applications from third party review rights under section 82(1) of the Act.

### A streamlined VCAT process for VicSmart applications

VCAT has established a process to streamline reviews for a VicSmart application.

VCAT will hear and determine a VicSmart application in the Short Cases List.

This will enable hearings and decisions on VicSmart matters to be made within a short timeframe.

A hearing should generally not take more than three hours with two hours to present submissions and evidence and one hour to allow the member to prepare and deliver an oral decision, if appropriate.

A site inspection is unlikely to be undertaken especially where the parties provide the tribunal with sufficient material in the form of photos, plans, aerial photos and the like, to convey accurate information about the site, its surrounds and the proposal.

### Information required for VCAT

A VCAT form has been developed to streamline an application for a review relating to a VicSmart application.

The VCAT form for a VicSmart application requires an applicant to submit all the information necessary for a review to be determined.

The information to be submitted by the applicant includes:

- a copy of the decision (if issued)
- all application documents and plans
- a copy of the covenant if the land is burdened by a registered restrictive covenant
- a copy of the written response from the referral authority if the application required a referral under clause 66 of the planning scheme
- a copy of the council officer's report, which should include details of the zoning and planning controls
- a calculation of elapsed days from when the permit application was lodged with the responsible authority (where the review is for a failure to decide within the prescribed time).



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The applicant is required to serve a complete copy of the VCAT application and all the accompanying material on council once an application for review has been lodged with VCAT.

Upon receipt of the application for review, VCAT will advise council that a review has been lodged and the scheduled date of the hearing. Council officers will not be required to complete the information required under *Practice Note – PNPE2 – Information from Decision-Makers and Authorities* (VCAT 2023).

It is important to note that an applicant must be given access to a free copy of the council officer report if the applicant intends to apply for a review to VCAT. This information is required by VCAT to ensure the planning controls specified are correct and to reduce council's workload to supply VCAT with the required information.

### What matters will be considered by VCAT?

The tribunal is required to consider the issues arising from the council officer's decision, requirements of the planning scheme, the decision guidelines set out in the relevant provision of the planning scheme for that VicSmart class of application, any relevant section 173 agreement and any matters that the council officer should have taken into account, rather than all the matters specified in section 84B of the Act.

Written submissions or other material should be concise and relevant and able to be read and addressed by the VCAT member and other parties within the time allocated for the hearing.

### Resolving disputes over classifying an application as VicSmart

In order to resolve a dispute about whether an application can be classified as, and processed under, VicSmart, two options are available:

- Sections 149(A) and 149(B) of the Act provide for declarations to be sought from VCAT regarding the interpretation of the planning scheme and anything done by a responsible authority under the Act.
- Alternatively, after 10 business days have elapsed an applicant can lodge a review at VCAT for failure to determine a VicSmart application. The first matter in dispute would be whether the application was classed as a VicSmart application or not.

In practice, a minor matter is likely to be determined expeditiously by council even when there is a disagreement about its classification as a VicSmart application.

## Other statutory processes

### Amending an application

The process for amending a VicSmart application is the same as for a regular application and is set out in *Using Victoria's Planning System* (DTP 2025).

The amended application is taken to be the application for the purposes of the Act and to have been received on the day that the responsible authority received the request for the amendment.

If the amended application is within the scope of a VicSmart class, the VicSmart process applies. If the amended application is outside the scope of a VicSmart class, the application is processed under the regular permit process.



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Where a regular application has been advertised, the application is subsequently amended, and where the amended application is within the scope of a VicSmart class, the VicSmart process applies.

Notice cannot be given of the amended application. Any objections received cannot be considered by the responsible authority when making its decision. A notice of decision cannot be issued and any objectors do not have a right of review.

In practice, if VicSmart applies it may be simpler for an applicant to lodge a new VicSmart application.

### Amending a permit

An application to amend a permit is considered in the same way as an application for a permit and is set out in *Using Victoria's Planning System* (DTP 2025).

If the application to amend a permit is within the scope of a VicSmart class, the VicSmart process applies regardless of whether the application was previously considered through the regular permit process.

Notice cannot be given of the amended permit application. Any objections received cannot be considered by the responsible authority when making its decision. A notice of decision cannot be issued and any objectors do not have a right of review.

If the application to amend a permit is outside the scope of a VicSmart class, the application would be processed under the regular permit process.

### Secondary consents

The processes for dealing with secondary consents have not been altered through the introduction of VicSmart.

### Applications to VCAT to amend a permit

The processes for dealing with applications to VCAT to amend a permit have not been altered through the introduction of VicSmart.

## Matters specific to certain VicSmart applications

### How does VicSmart work with a requirement for a cultural heritage management plan?

The requirements related to cultural heritage management plans are the same as for a regular application.

Many VicSmart classes of application are exempt from the requirements of the Aboriginal Heritage Regulations 2018. However, some VicSmart classes of application will not be exempt from the requirements of the Regulations if undertaken in an area of cultural significance.

Under the Aboriginal Heritage Regulations 2018, where a cultural heritage management plan is required:

- the responsible authority cannot issue a planning permit until it receives a copy of an approved cultural heritage management plan
- a planning permit cannot be granted for an activity that is inconsistent with an approved cultural heritage management plan

- the period to decide the application is deemed not to commence until the decision maker receives a copy of the approved cultural heritage management plan.

## Mandatory conditions for subdivision

Mandatory conditions that must be applied to permits for subdivision are detailed at clause 66.01 of planning schemes. These conditions relate to the provision of telecommunication facilities, water supply, drainage, sewerage facilities, electricity, gas services and roads.

The table below summarises the requirements of clause 66.01 and how they apply to various classes of VicSmart applications for subdivision.

| Class of VicSmart application                                                     | Do mandatory conditions apply?                                                                               |                                                                                                        |
|-----------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------|
|                                                                                   | Conditions related to telecommunications                                                                     | Conditions related to water supply, drainage, sewerage facilities, electricity, gas services and roads |
| Boundary realignment                                                              | No                                                                                                           | Yes, unless each lot contains an existing building                                                     |
| Subdivision of existing building                                                  | No, if already connected to telecommunications                                                               | No                                                                                                     |
| Two lot subdivision                                                               | Yes                                                                                                          | Yes                                                                                                    |
| Two lot subdivision in a rural zone where each new lot meets the minimum lot size | No, if the responsible authority is satisfied that connection to telecommunication services is not warranted | Yes                                                                                                    |

## Estimating the cost of buildings and works in non-residential zones

The 'estimated cost of development' means the estimated cost of the development for which the permit is required, but does not include items such as land value, contingency fees or holding costs, consultant or architect fees, the value of any material to be extracted from the land as part of the use or development, development levies or contributions, or other items not directly related to the cost of construction or carrying out of the proposed buildings or works or subdivision.

Special attention should be paid to the words for which the permit is required. For example, the estimated cost of development could exclude internal alterations if no permit is required for these matters.

Source: VCAT application guide and *Hotel Brighton Pty Ltd v Bayside CC* [2012] VCAT 675 (23 May 2012).

## What is the VicSmart process for SBO applications where Melbourne Water is the referral authority?

For VicSmart applications under the SBO where Melbourne Water is the referral authority, Melbourne Water's consent to the proposal is required before a permit application can be lodged with council.



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The applicant must obtain Melbourne Water's consent to the proposal within three months prior to submitting their application to council.

After considering the proposal, Melbourne Water will either:

- consent to the application with no conditions
- consent to the application with conditions
- object to the application.

When the applicant has received written approval from Melbourne Water, which will include a set of endorsed stamped plans, a VicSmart planning permit application can then be formally lodged at council. A copy of Melbourne Water's written consent together with a copy of the endorsed plans must be submitted to the council with the application along with the other required information set out in clause 59.08.

If the applicant is unable to obtain Melbourne Water's consent or if Melbourne Water objects to the application, the application is not a VicSmart application and must be processed through the regular permit process.

Under the regular permit process, council will be required to formally refer the application to Melbourne Water. Once Melbourne Water formally objects to the planning permit under section 55 of the Act, review rights to VCAT will apply.

### When is approval from Melbourne Water not required?

Some councils have applied the SBO to council drains and VicSmart applications under this planning control do not require the consent of Melbourne Water. In these cases, an applicant will not be required to seek Melbourne Water's approval for the proposal before lodging their application with council.

The application for planning permit will be required to be accompanied by the information set out in clause 59.08 with the exception of the referral authority's written consent.

## Car parking

### When is a reduction of car parking requirements classed as VicSmart?

An application can only be a VicSmart application if all permit triggers are classed as VicSmart. If a permit is required to reduce a car parking requirement and a permit is required to use land or construct buildings and works that are not classed as VicSmart, then the proposal is not a VicSmart application. Generally, an application to reduce car parking requirements will be processed under VicSmart if the application provides for:

- a change of use that is 'as of right' under Section 1 of the Table of Uses in the zone but requires approval for a reduction in car parking of up to ten car spaces; or
- buildings and works up to \$500,000 for an 'as of right' use in a commercial zone, Activity Centre Zone, Capital City Zone, Comprehensive Development Zone, Docklands Zone, Precinct Zone, Priority Development Zone or Urban Growth Zone, or up to \$1,000,000 in an industrial zone, and also requires approval for a reduction in car parking of up to ten car spaces.

### How is the requirement for the preparation of a car parking plan, design standards and construction standards met under VicSmart?

Where a VicSmart application is being made to reduce the car parking requirement or for buildings and works up to the applicable cost of development limit, the information required in a

car parking plan at clause 52.06-7 may be included in the plan submitted with the application. The provision of car parking must meet the design standards detailed in clause 52.06-8 (unless the responsible authority agrees otherwise) and the construction standards of clause 52.06-10.

Approving the plans accompanying a VicSmart application showing the car parking layout will also satisfy the requirement for a car parking plan under clause 52.06-7. A separate car parking plan is not required.

## Other supporting information

VicSmart is supported by information tailored towards users of the system. The supporting information and target audience is detailed in the table below.

|                         | Title                                                                                 | Type                 | Primary target audience |                            |
|-------------------------|---------------------------------------------------------------------------------------|----------------------|-------------------------|----------------------------|
|                         |                                                                                       |                      | Applicant               | Planners and practitioners |
| Provisions              | The relevant provisions of the planning scheme for that VicSmart class of application | Statutory provisions |                         | ✓                          |
| Application information | <i>How to Apply for a VicSmart Planning Permit Under the Special Building Overlay</i> | Information sheet    | ✓                       | ✓                          |
|                         | Checklists for VicSmart Applications                                                  | Checklist            | ✓                       | ✓                          |
|                         | <i>VicSmart Guide</i> (this guide)                                                    | Guide                |                         | ✓                          |
|                         | <i>VCAT Review Process for VicSmart</i>                                               | Information sheet    | ✓                       | ✓                          |
| Business process tools  | VicSmart application forms                                                            | Form                 | ✓                       | ✓                          |
|                         | Model officer report template                                                         | Template             |                         | ✓                          |
|                         | Template for delegation from CEO                                                      | Template             |                         | ✓                          |
|                         | <i>Suggested Business Practices for Councils</i>                                      | Guide                |                         | ✓                          |
|                         | Business process tools                                                                | Web-based tool       | ✓                       | ✓                          |
| All                     | VicSmart permits<br><a href="http://planning.vic.gov.au">planning.vic.gov.au</a>      | Website              | ✓                       |                            |
|                         | VicSmart for councils<br><a href="http://planning.vic.gov.au">planning.vic.gov.au</a> | Website              |                         | ✓                          |

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